



Appeal Decision

Site visit made on 17 August 2021

by **David Smith BA(Hons) DMS MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 6 October 2021

Appeal Ref: APP/A2280/W/21/3266477

309 Lower Rainham Road, Gillingham, ME7 2XH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Nexus Land Group against the decision of Medway Council.
 - The application Ref MC/20/1025, dated 1 May 2020, was refused by notice dated 16 October 2020.
 - The development proposed is for the construction of three self-build dwellings with associated parking and amenity space.
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Decision

1. The appeal is allowed and planning permission is granted for the construction of three self-build dwellings with associated parking and amenity space at 309 Lower Rainham Road, Gillingham, ME7 2XH in accordance with the terms of the application, Ref MC/20/1025, dated 1 May 2020, subject to the conditions in the attached schedule.

Preliminary Matters

2. The application was made in outline with all matters reserved for future determination and the appeal will be dealt with on the same basis. The plans showing details of various matters including siting, access arrangements, boundary treatments and landscaping are therefore indicative only.
3. The appeal will proceed in the name of the original applicant rather than one of the Directors of the appellant company.
4. The appellant has provided a unilateral undertaking dated 21 September 2021 which has taken account of comments made by the Council. In particular, it will not cease to have effect once the mitigation contribution to avoid adverse effects on Special Protection Areas has been paid.

Main Issues

5. These are:-
 - The effect of the proposed dwellings on the character and appearance of the surrounding area;
 - Whether the site is in an accessible location that would promote the use of sustainable transport modes; and
 - Whether other material considerations outweigh any harm arising.

Reasons

Character and appearance of the surrounding area

6. The appeal site is located between 309 Lower Rainham Road and Sharps Green which is a lane leading towards the Riverside Country Park. It comprises a well-manicured lawn fringed by vegetation and has been used as a garden area for several years.
7. The site is outside of any urban area or rural settlement boundary as defined by the Medway Local Plan of 2003. It is therefore in the countryside for planning policy purposes. None of the types of development allowed for by the restrictive provisions of Policy BNE25 apply in this case. Furthermore, there is an expectation that development should maintain and, where possible, enhance the character, amenity and functioning of the countryside. The proposal would also be within the Riverside Marshes Area of Local Landscape Importance identified in the Medway Landscape Character Assessment 2011. Policy BNE34 establishes that the landscape character and function of the area should not be materially harmed.
8. This section of Lower Rainham Road contains a mixture of open land with small pockets of development. The country park is to the rear of the site. Because of its domestic appearance this land does not contribute to the rural character that exists elsewhere along the road. Furthermore, for the same reason and due to its enclosure by hedging along most of its road frontages, there is no obvious linkage to the country park or to the expanse of the marshes beyond. There are, for example, no views across to the estuary and the site plays no meaningful role in providing a setting for either of these areas.
9. However, by erecting three houses there would be a shift from open to developed land and hence some suburbanisation at the expense of the site's current character. Notwithstanding the existing and proposed greenery this would be likely to be visible from Lower Rainham Road, Sharps Green and parts of the country park. That said, the dwellings would appear as a natural continuation of the row of properties to the east and would not intrude into obvious countryside. A design code has been prepared to ensure that the houses are of the requisite quality having regard to the expectations in the National Planning Policy Framework to achieve well-designed places.
10. In summary, it is difficult to reconcile this site with the term "countryside". For the reasons given the proposal would not have an adverse impact on wider landscape character and therefore would accord with Policy BNE34. However, by building on the land some of its openness would be lost contrary to Policy BNE25 and to that extent there would be some detriment to the locality. There would therefore be harm caused to the character and appearance of the surrounding area but the level of that harm would be limited and localised.

Whether the site is in an accessible location

11. Policy BNE25 expects that development should offer a realistic chance of access by a range of transport modes. The appeal site is within walking distance of the country park and its café, the Three Mariners public house and a few employment, community and retail facilities. However, these are limited in scope. There is a bus stop outside the site but there is only an infrequent service on this route. All local shops and other facilities are more than 800m

away and therefore unlikely to be accessed on foot. It would nevertheless be feasible to cycle to the stations at either Rainham or Gillingham.

12. The Framework recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. Nevertheless, opportunities to promote walking, cycling and public transport should be pursued and patterns of growth managed accordingly. Three new dwellings would not be a major development. However, the reality is that future occupiers are likely to be car dependent for most journeys as the services within easy reach are sparse. So whilst some choice exists the proposal would not encourage use of sustainable transport modes and would not be in accessible location. It would therefore be at odds with the relevant part of Policy BNE25.

Other material considerations

13. The Council cannot demonstrate a five year housing land supply as expected by paragraph 74 of the Framework. Furthermore, the 2020 Housing Delivery Test results show that only 55% of the housing requirement was delivered between 2017 and 2020. This amounts to a shortfall of just over 2,000 units. Therefore both the past trend and future prospects indicate that the housing supply situation in Medway is grave. Moreover, the proposal should be subject to the presumption in paragraph 11 d) of the Framework.
14. As part of significantly boosting the supply of housing, the Government considers it important that the needs of groups with specific housing requirements are addressed. The submitted obligation confirms that the dwellings would be self-build and custom housebuilding plots. The Planning Practice Guidance (PPG) highlights the benefits of this type of housing in diversifying the housing market and increasing consumer choice. There are also certain duties on the Council arising from the Self-Build and Custom Housebuilding Act of 2015.
15. The self-build register has recorded 79 individuals over the four base years to date. However, the PPG indicates that this data can be supplemented by secondary sources. There is no evidence as to whether suitable permissions have been given for enough serviced plots to meet demand although the Council acknowledges the need in the area. But it is reasonable to assume that since general housing delivery is falling behind then so too is provision for self-build and custom housing. This is especially as no specific development plan policies have been highlighted and as no other schemes in the pipeline have been referred to.
16. The Medway Estuary and Marshes Special Protection Area (SPA) and the Thames Estuary and Marshes SPA provide habitats for overwintering birds. Because of its proximity the proposal has the potential to affect its features of interest. In combination with other development, extra houses here would be liable to lead to recreational disturbance and so have a detrimental impact on the birds. There would therefore be a likely significant effect on the SPAs.
17. To mitigate this impact the Council expects that a financial contribution is made to the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring Strategy. The collection of the tariff to facilitate off-site measures is intended to avoid significant or long-term impacts. Natural England concurs with this approach. The planning obligation would secure the appropriate SPA mitigation contribution. In this way harmful effects would be prevented. As a

result, following an appropriate assessment, the proposal would not adversely affect the integrity of the SPA.

Final Balance

18. The adverse impacts arising from the proposal are the effect on the character and appearance of the area and the failure to promote the use of sustainable modes of transport. The proposal would not accord with the development plan. Existing policies should not be considered out-of-date simply because they were adopted prior to the publication of the Framework. The Medway Local Plan is of some vintage. However, the relevant provisions of Policy BNE25 chime with the Framework which recognises the intrinsic character and beauty of the countryside and the importance of a genuine choice of transport modes.
19. The findings of the Inspector in an appeal at Merryboys Road, Cliffe Woods (Ref: APP/A2280/W/20/3245079) took account of other Local Plan policies and the strict settlement limits which is not, in itself, the objection to this proposal. The 'basket' of policies under consideration were therefore not the same as in this case. Because of the consistency of Policy BNE25 with the Framework in terms of the main issues in this appeal, significant weight should be attached to the conflict with the development plan. The level of actual harm to the character and appearance of the area would nevertheless be modest. The implications for the promotion of sustainable transport would similarly be modest given the size of the development.
20. Set against this the general housing supply position is deficient and there has been a notable under-delivery of housing over the last three years. The proposal is for self-build and custom build housing for which there is a demand and where the response to meeting the need is unclear. Three new houses would not greatly improve total supply but in the current circumstances in Medway any additional provision would be valuable. Furthermore, the proposal would address the needs of a group with specific requirements. Consequently against the backdrop of the situation in Medway, these are considerations that weigh heavily in favour of the scheme.
21. Paragraph 9 of the Framework explains that the three objectives of sustainable development are not criteria against which every decision should be judged. Rather, when paragraph 11 d) is in play, the starting point is that permission should be granted. The overall adverse impacts would be significant although qualified to some extent by the small scale of the proposal. The objections identified nevertheless need to surmount a high hurdle to prevail in this balance. Indeed, they do not significantly and demonstrably outweigh the benefits of three additional homes for self-build when assessed against the policies in the Framework taken as a whole. As a result the presumption in favour of sustainable development should be applied.

Conditions

22. As part of the standard conditions for outline permissions reference should be made to the Design Code to ensure that a well-designed place is achieved by the development. To avoid the creation of hazards along the busy Lower Road provision should be made for off-street parking. Making provision for vehicle charging points is required to promote sustainable transport as referred to at paragraph 112 e) of the Framework.

23. In the light of the recommendations of the habitats survey, measures are required to protect biodiversity during construction. However, a separate condition requiring a precautionary bat mitigation strategy is not necessary given the low potential for bats to be roosting in the trees on site. To safeguard the living conditions of those nearby and to minimise disruption more generally a construction management plan should be put in place.
24. As well as adhering to the relevant tests the Framework states that planning conditions should be kept to the minimum. There is insufficient evidence or justification to warrant imposing several of the suggested conditions.
25. All matters are reserved and so details of the access and visibility splays would be submitted subsequently and a condition referring to the indicative plan, surfacing and drainage and the provision of the splays are therefore not necessary. Conditions relating to boundary treatments are covered by the reserved matter of landscaping which includes screening by fences, walls or other means. The implementation of the boundary landscaping can be controlled, if necessary, by conditions on any reserved matters approval. Given that the properties would be individually owned there is no need to require a landscape management plan at this stage.
26. The Self-Build and Custom Housebuilding Scheme required by the obligation will include details of the servicing arrangements. This should be sufficient to ensure that provision is made for connections for electricity, water and wastewater. Given the current use of the site and the lack of any evidence about potential contamination a precautionary condition regarding unexpected discoveries is unnecessary. The location of the site is not so sensitive that external lighting should be controlled. The obligation ensures that the dwellings would be for self-build and custom houses and so conditions in that respect are not required. There is no justification for the removal of permitted development rights given the location and likely spacing of the three houses.

Conclusion

27. The proposed development would be contrary to the development plan but material considerations, especially the presumption in the Framework, outweigh this conflict. Therefore, for the reasons given, the appeal should be allowed.

David Smith

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) Details of the access, appearance, landscaping, layout, and scale ("the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission. All applications shall be in conformity with the approved Design Code received by the local planning authority on 8 September 2020.
- 3) The development shall take place not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) No development shall take place until a method statement for the protection of biodiversity during construction has been submitted to and approved in writing by the local planning authority. The method statement shall include the measures recommended in section 8 of the Extended Phase 1 Ecological Habitat Survey Report (Hone Ecology, January 2020). The measures required by the method statement shall be implemented as approved and in accordance with the approved timescale.
- 5) No development shall take place until a construction environmental management plan has been submitted to and approved in writing by the local planning authority. The management plan shall include details of hours of working, delivery times and measures to control noise, dust and lighting during the construction phase. Construction works shall be undertaken in accordance with the approved management plan.
- 6) The layout details submitted pursuant to Condition 1 shall include details of parking for each of the dwellings. No dwelling shall be occupied until the parking to serve it has been provided in accordance with the approved details. Thereafter those areas shall be retained and kept available for the parking of vehicles.
- 7) No development shall take place above ground floor slab level until details of the provision of one electric vehicle charging point for each dwelling has been submitted to and approved in writing by the local planning authority. Details shall include the location, charging type (power output and charging speed), associated infrastructure and timetable for installation. The development shall be implemented in accordance with the approved details and shall thereafter be retained.